XI-H—8

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(19)

मामला क्रमांक Cr. A. 480/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT	Narayan, S/o Lalbihari Lohar, aged 40 years, Occupation : Labour, R/o Village Togripara, Police Station Balrampur, District Surguja (CG).
		-Versus-
	RESPONDENT	State of Chhattisgarh, Through Police Station Balrampur.

(Criminal Appeal under Section 374(2) of the Cr.P.C.)

Division Bench :

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ

31-10-2007

Heard Shri Abhay Tiwari, counsel for the appellant & Shri U.K.S. Chandel, Panel Lawyer for the State.

Oral judgment dictated on *dais*.

L.C. Bhadoo, J

The accused/appellant has preferred this appeal under Section 374(2) of the Cr.P.C. questioning the legality & correctness of the judgment of conviction and order of sentence dated 9-4-2003 passed in Sessions Trial No.415/2001 whereby and whereunder learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code for committing the murder of his wife namely, Phoolkunwari, and sentenced him to undergo imprisonment for life & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo imprisonment for six months.

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आदेश पत्रक (पूर्वानुबद्ध)

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2) Case of the prosecution, in brief, is that on 27-8-2001 the accused/ appellant namely, Narayan along with his wife namely, Phoolkunwari (since deceased) went towards the mission area for selling the wood and after selling the wood, they consumed liquor. When they were in inebriated condition, quarrel took place between them. In that process accused assaulted his wife with a lathi, kick & fist, as a result of which Phoolkunwari became unconscious. At about 3.00 a.m. the father of the accused namely, Lalbihari was informed by Longe Kodaku, on which Lalbihari along with wife namely, Nasni went towards that site and saw that Phoolkunwari was lying in unconscious condition. They noticed that still she was alive; therefore, they brought her to the residence. However, at about 4.00 a.m. Phoolkunwari succumbed to the injuries. Lalbihari lodged the report in Police Station Balrampur. After registering the First Information Report (Ex.P/2), the Investigating Officer left for the village of accused. After giving notice to the Panchas, inquest (Ex.P/1) was prepared on the body of deceased. Clothes of the deceased were seized under Ex.P/5. The body of the deceased was sent for postmortem examination to Primary Health Centre, Balrampur, where Dr. N.K. Dutt (PW-11) conducted postmortem on the body of deceased and he opined that the cause of death was shock as a result of rapture of spleen leading to profuse hemorrhage. The death was homicidal in nature. Postmortem is Ex.P/7. Doctor noticed as many as 13 injuries on the body of deceased. On dissection, the spleen was ruptured, which was major cause of death of Phoolkunwari.

3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ramanujgani, who in turn committed the case

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to the Court of Sessions Judge, Ambikapur, from where learned Additional Sessions Judge, received the same on transfer for trial.

4) In order to establish the charge against the accused/appellant, the prosecution examined 14 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. He stated that he is innocent, he has been falsely implicated in the crime and he be acquitted.

5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard Shri Abhay Tiwari, learned counsel for the appellant and Shri U.K.S. Chandel, Panel Lawyer for the State.

7) Shri Tiwari, learned counsel for the appellant, argued that in this case all the witnesses have turned hostile. There is no ocular evidence. He further argued that only lathi has been recovered at the instance of the accused, but the lathi is such an item, which is commonly found in the houses of village. Moreover, there is no blood stain or any other mark on the lathi, which connected the accused with the crime in question. He also argued that both the accused and the deceased consumed liquor and when the deceased was in inebriated condition she fell down and sustained injuries on hard-petrified surface. While inviting the attention of the Court towards the cross-examination of PW-11 Dr. N.K. Dutt, learned counsel argued that the Doctor has categorically stated that these injuries can be sustained by fall.

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8) On the other hand, Shri Chandel, learned counsel for the State, supported the judgment of the trial Court.

9) Having heard learned counsel for the parties, we have perused the record. In this case, all the witnesses have turned hostile. There is no ocular or direct evidence to connect the accused with the crime in question. The conviction rests on the circumstantial evidence i.e. :

i) The deceased was seen alive with the accused just before her death.

ii) The deceased died on account of rapture of spleen and there were about 13 injuries on almost every part of the body of deceased. The accused has not explained how the deceased sustained the injuries.

10) As per the settled law in order to rest conviction based on the circumstantial evidence, the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.**[1] held that :

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely

[1] (1994) 2 SCC 220

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indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

11) **First circumstance :** As far as this circumstance is concerned, PW-2 Lalbihari Lohar (father of the accused), lodged the report (Ex.P/2) in Police Station, in which he mentioned that his son and the daughter-in-law went towards the mission area to sell the wood and after selling the wood, they consumed liquor & started quarreling. In that process the accused attacked Phoolkunwari, as a result of which she sustained injuries & died, but in the Court evidence he has resiled from the above statement. In para 2 of his evidence he has stated that in the morning the deceased and the accused went to collect the wood and they returned in the evening after collecting the wood. Thereafter both of them went to Balrampur for selling the wood and second time also they took wood for selling. His grandson namely, Jitendra also went for selling the wood, but he was sent back by his son (accused). He informed him that the accused and his wife had gone towards Deehbat (village). They went to consume liquor, but they did not return to the house. In the night at about 12.00 p.m. to 1.00 a.m. neighbourer came and informed that his son & daughter-in-law are in drunken condition and they are in the field of one Avatar. His son is sitting there whereas his daughter-in-law is sleeping. Therefore, the wife of this witness namely, Nasni went to bring his son & daughter-in-law and she brought them. His daughter-in-law was unconscious. At about 4.00 a.m. when his wife saw his daughter-in-law she was already dead. Therefore, he went to Police Station and lodged the report. From this evidence, it is established that the accused and the deceased went together to sell the wood and thereafter they went to consume liquor. In the night, one of the villagers informed this witness that the accused and the deceased are in

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drunken conditions. Therefore, his wife went to bring them and she brought them. The deceased was in unconscious position. At about 4.00 a.m. she died. Other witnesses have turned hostile and they have not supported the prosecution case.

12) **Second circumstance :** PW-11 Dr. N.K. Dutt, has stated that on 28-8-2001 he conducted postmortem on the body of the deceased. There were contusions & abrasions. 13 numbers of injuries were found on almost every part of the body of deceased. He has further stated that on dissection, it was found that the spleen was ruptured and the cause of death was on account of hemorrhage due to rupture of spleen. Even though in cross-examination he has stated that the injuries found on the body of Phoolkunwari can be sustained by fall on a rock, but looking to the number of injuries and looking to the fact that spleen was ruptured, it is difficult to accept the statement of Doctor that such number of injuries can be caused by fall. It is established that at the time when Phoolkunwari sustained all these injuries the accused was with the deceased. Therefore, as per the provisions of Section 106 of the Evidence Act the burden was on the accused to explain the fact that how Phoolkunwari sustained simple & homicidal injuries. In the statement recorded under Section 313 of the Cr.P.C. the accused has not stated anything how Phoolkunwari sustained injuries. He simply denied the material appearing against him. Therefore, the accused has failed to discharge the burden, which was on his shoulder as per the provisions of Section 106 of the Evidence Act. Therefore, this is an additional circumstance against the accused regarding the commission of crime and we are fortified in our view by the judgment of the Apex Court rendered in the matter of **Trimukh Maroti Kirkan vs. State of**

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Maharashtra[2]. In this case the Apex Court held that "where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of S. 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. In case of no explanation or false explanation it would become an additional link in chain of circumstances." Therefore, it is established that when Phoolkunwari sustained injuries and even the spleen was ruptured, the accused was with the deceased and he has not offered any explanation. Therefore, that is an additional link against the accused in chain of circumstances.

13) Considering the above circumstantial evidence, we are of the considered opinion that involvement of the accused in the crime in question is established and there is no illegality or infirmity in the judgment of the trial Court.

14) Now coming to the nature of offence committed by the accused, it has come in the evidence that the accused and the deceased were in the habit of consuming liquor. Even on the fateful day, they after selling the wood

[2] 2006 AIR SCW 5300

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consumed liquor and while they were returning to the house, some quarrel started between the two. In that process accused attacked the deceased, as a result of which she sustained injuries. When the deceased fell down and became unconscious accused did not leave the place and he was sitting near by the body of his wife till his mother came to the place for taking them to the residence. The mother of the accused ultimately came and took them to residence. Except the rupture of spleen, rest of the injuries are simple in nature. Both husband & wife quarreled after consuming liquor. Therefore, the intention to cause death of Phoolkunwari by the accused cannot be inferred from the above evidence. However, looking to the manner in which the spleen was ruptured it can definitely be inferred that the accused while attacking the deceased had knowledge that by attacking Phoolkunwari in such a manner he may likely to cause death. Therefore, the offence against the accused does not travel beyond Section 304 Part-II of the Indian Penal Code.

15) In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside; instead thereof he is convicted under Section 304 Part-II of the IPC and sentenced to undergo R.I. for 7 years. It is stated that the accused is in detention since 29-8-2001 till today. The accused shall be entitled for set off of the period of sentence he had already undergone.

Sd/-
L.C.BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge